

ARKANSAS SUPREME COURT

No. CR 97-401

WILLIE GASTER DAVIS
Petitioner

v.

STATE OF ARKANSAS
Respondent

Opinion Delivered

January 31, 2008

PRO SE PETITION FOR WRIT OF
ERROR CORAM NOBIS [CIRCUIT
COURT OF DESHA COUNTY, CR 95-
110]

PETITION TREATED AS PETITION
TO REINVEST JURISDICTION IN THE
TRIAL COURT TO CONSIDER A
PETITION FOR WRIT OF ERROR
CORAM NOBIS AND DENIED.

PER CURIAM

A jury found petitioner Willie Gaster Davis guilty of first-degree murder, robbery, theft of property, and false imprisonment, and sentenced him to a term of life imprisonment. This court affirmed the conviction and sentence. *Davis v. State*, 330 Ark. 76, 953 S.W.2d 559 (1997). Petitioner now brings a petition in this court for writ of error coram nobis, which we treat as a petition to reinvest jurisdiction in the trial court to consider a petition for the writ.¹ In those instances where the judgment of conviction was entered on a plea of guilty or nolo contendere, or the judgment of conviction was not appealed, the petition for writ of error coram nobis is filed directly in the trial court. *Dansby v. State*, 343 Ark. 635, 37 S.W.3d 599 (2001) (per curiam). After a judgment has

¹For clerical purposes, the instant petition was assigned the same docket number as the direct appeal.

been affirmed on appeal, a petition filed in this court for leave to proceed in the trial court is necessary because the circuit court can entertain a petition for writ of error coram nobis only after we grant permission. *Id.* We therefore treat petitioner's motion as a petition to reinvest jurisdiction in the trial court to consider a petition for writ of error coram nobis.

The function of the writ of error coram nobis is to secure relief from a judgment rendered while there existed some fact which would have prevented its rendition if it had been known to the trial court and which, through no negligence or fault of the defendant, was not brought forward before rendition of judgment. *Cloird v. State*, 357 Ark. 446, 182 S.W.3d 477 (2004). A writ of error coram nobis is an extraordinarily rare remedy, more known for its denial than its approval. *Larimore v. State*, 341 Ark. 397, 17 S.W.3d 87 (2000). Coram nobis proceedings are attended by a strong presumption that the judgment of conviction is valid. *Penn v. State*, 282 Ark. 571, 670 S.W.2d 426 (1984) (citing *Troglin v. State*, 257 Ark. 644, 519 S.W.2d 740 (1975)).

For the writ to issue following the affirmance of a conviction, the petitioner must show a fundamental error of fact extrinsic to the record. *Larimore v. State*, 327 Ark. 271, 938 S.W.2d 818 (1997). The writ is allowed only under compelling circumstances to achieve justice and to address errors of the most fundamental nature. *Pitts v. State*, 336 Ark. 580, 986 S.W.2d 407 (1999) (per curiam). We have held that a writ of error coram nobis was available to address certain errors that are found in one of four categories: insanity at the time of trial, a coerced guilty plea, material evidence withheld by the prosecutor, or a third-party confession to the crime during the time between conviction and appeal. *Id.* at 583, 986 S.W.2d at 409.

Petitioner's claim falls within the third category, but does not meet the criteria required to support such a claim in an error coram nobis proceeding. Petitioner asserts violations of his right to

due process as guaranteed by *Brady v. Maryland*, 373 U.S. 83 (1963). He contends that certain evidence and a laboratory report were withheld from the trial court. The evidence concerned the absence of his hair on the victim or the lack of a match of hairs found on the victim to him. The report, by a fingerprint examiner, concerned fingerprints, or the lack of them, on the victim's keys.

There are three elements of a *Brady* violation, as follows: (1) the evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; (2) that evidence must have been suppressed by the State, either willfully or inadvertently; (3) prejudice must have ensued. *Larimore*, 341 Ark. at 404, 17 S.W.3d at 91. As a part of our review of a decision on a petition for writ of error coram nobis that makes such a claim, we determine whether there is a reasonable probability that the judgment of conviction would not have been rendered, or would have been prevented, had the claimed exculpatory evidence been disclosed at trial. *See Larimore*, 341 Ark. at 408, 17 S.W.3d at 94.

As the State notes in its response, petitioner has not asserted that the evidence at issue was withheld from the defense; he argues only that it was not presented to the jury at trial or was never developed through testing. Petitioner does not present facts to support his claim as to the second element of a *Brady* violation.

In addition, even if withheld, the evidence petitioner portrays as exculpatory would not have prevented the judgment had it been disclosed. The description of events in petitioner's own statement admits that he left with the victim in the car she was driving and indicates that he had sex with her. Two witnesses testified that petitioner forced the victim into the passenger side of the car and then drove away. Petitioner was later found at his house, asleep on a couch beside the victim's body.

If testing had failed to identify petitioner's fingerprints or hair, or testing had shown the hairs

or any fingerprints belonged to another individual, and that evidence had been presented to the jury, the evidence would not serve to raise a reasonable probability that the judgment of conviction would not have been rendered. Petitioner's driving the car with the victim in it and his proximity to her was well established, regardless of any contact the victim or her keys may have had with another person. That someone else had handled the keys or had left hairs on the victim would not have implicated another person in the murder or cast any doubt upon the inferences to be drawn from petitioner's interactions with the victim as portrayed in the testimony.

Petitioner has failed to present allegations that provide a basis to find a *Brady* violation. His claims do not justify reinvesting jurisdiction in the trial court to consider a petition for writ of error coram nobis, and we therefore deny the petition.

Petition treated as petition to reinvest jurisdiction in the trial court to consider a petition for writ of error coram nobis and denied.